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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,556

10/12/2005

Shawn Fowler

THAS126531

6653

26389

7590

10/01/2008

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SEATTLE, WA 98101-2347

EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,556	<b>Applicant(s)</b> FOWLER ET AL.	
	<b>Examiner</b> Brent T. O'Hern	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2 September 2008 has been entered.

### ***Claims***

2. Claims 1-10 are pending.

## **WITHDRAWN REJECTIONS**

3. All rejections of record in the Office Action mailed 1 May 2008, pages 2-7, paragraphs 4-5, have been withdrawn due to Applicant's amendments in the Paper filed 2 September 2008.

## **NEW REJECTIONS**

### ***Claim Rejections - 35 USC § 112***

4. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. The phrase "not less than ten gauge" in claim 1, line 9 is vague and indefinite since it is unclear whether this refers to the number or the diameter of the gauge.

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6. The phrases “six gauge” and “three gauge” in dependent claim 8, lines 2 and 4, respectively, are vague and indefinite since it is unclear how it is possible for six and three gauge to not be less than ten gauge per independent claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2, 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kent (US 5,924,694).

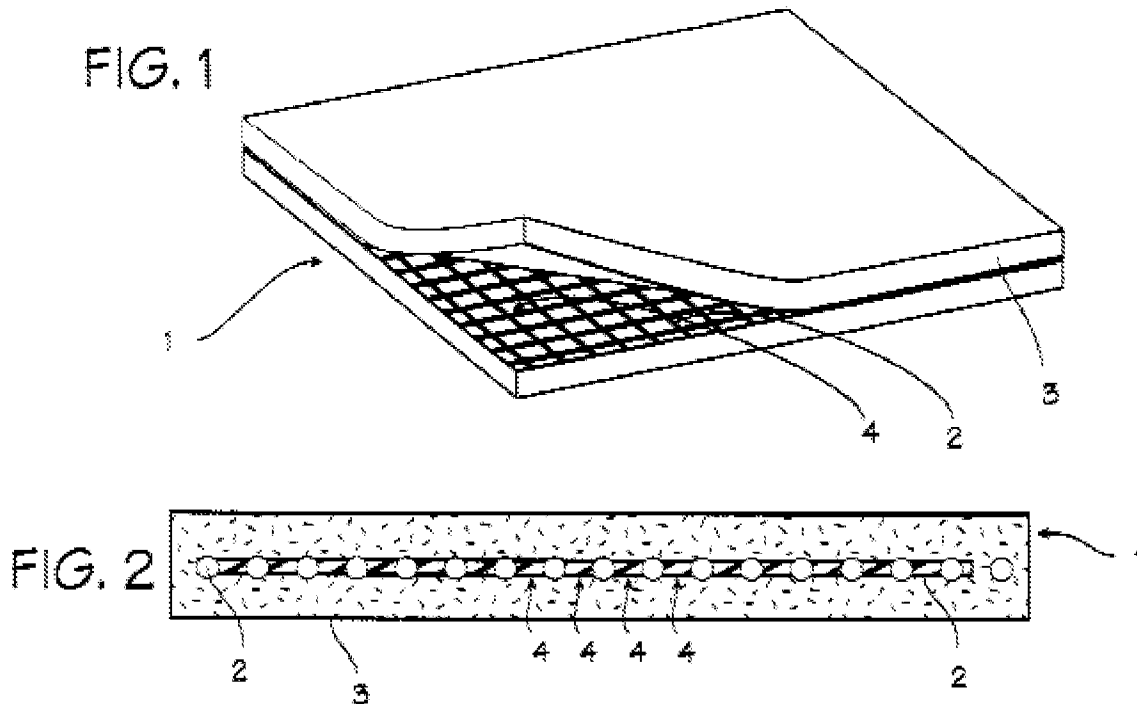
The above claims are rejected under 35 USC 102 based on “gauge eighteen wire” interpreted as being greater than “gauge ten wire”.

Kent ('694) teaches a rubber mat comprising a flexible rubber slab having opposed side edges defining a width and opposed end edges defining a length; and a rigidifying grid of reinforcing wire made of steel having the same gauge embedded within the rubber slab and consisting of a plurality of parallel spaced wires embedded within the rubber slab and extending between the opposed side edges for most of the width of the rubber slab and a plurality of evenly parallel spaced wires embedded within the rubber slab and extending between the opposed end edges for most of the length of the rubber slab; the reinforcing wire being not less than number ten gauge wire in order to provide sufficient rigidity while retaining sufficient flexibility to conform to an uneven surface (*See FIGs 1 and 2 and col. 3, l. 1 to col. 4, l. 4, col. 4, ll. 23-34, mat #1 with*

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*steel wire/screen embedded within rubber #3. Gauge eighteen wire is interpreted as being greater than gauge ten wire. The claims and the Specification do not set forth any relative dimensions or size of the wires but rather just a relative number gauge.).*

The phrases "access mat" in claim 1, line 1 of the preamble and "to conform to the uneven terrain" in claim 1, line 10 are not interpreted as limiting the body of the claim but rather directed to the intended use of the mat. The mat is clearly capable of being used as such.



**Claim Rejections - 35 USC § 103**

8. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kent (US 5,924,694) with evidence by Rue (US 6,048,129).

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If the phrase “not less than ten gauge wire” in claim 1, line 9 is interpreted as meaning the diameter of the wire is greater than or equal to that of ten gauge wire then independent claim #1 and the dependent claims are rejected under 35 USC 103.

Kent ('694) teaches a rubber mat, comprising a flexible rubber slab having opposed side edges defining a width and opposed end edges defining a length; and a rigidifying grid of reinforcing wire made of steel having the same gauge embedded within the rubber slab and consisting of a plurality of parallel spaced wires embedded within the rubber slab and extending between the opposed side edges for most of the width of the rubber slab and a plurality of evenly parallel spaced wires embedded within the rubber slab and extending between the opposed end edges for most of the length of the rubber slab with the reinforcing wire providing sufficient rigidity while retaining sufficient flexibility to conform to the surface applied thereto (*See FIGs 1 and 2 and col. 3, l. 1 to col. 4, l. 4, col. 4, ll. 23-34, mat #1 with steel wire/screen embedded within rubber #3.*), however, fails to expressly disclose the wire not being not less than number ten gauge wire, being six and three gauges in the different directions, the wire being of different gauges in different directions, the spacing being two or three inches in one direction and different in the different directions and the rubber being made from recycled vehicular tires.

However, Kent ('694) teaches the screen needs to be strong enough to give structural support and flexible enough so as to conform to the surface to be covered and the size of the wire and spacing can be larger or smaller depending on how the mat is used (*See col. 3, l. 1 to col. 4, l. 4, col. 4, ll. 23-34.*). Furthermore, Applicant

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acknowledges on p. 4, lines 26-28 of Applicant's Specification that the gauge and spacing of the wire can be altered to satisfy the intended use.

Regarding the rubber being recycled vehicle tires, it is noted that at the time of Applicant's invention, recycled tires were abundant, more environmentally friendly to reuse than to throw away and use virgin rubber, are a source of inexpensive rubber and widely used in rubber mat products. See as evidence col. 3, ll. 66-67 of Rue ('129) where recycled tires are used for mats.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to use recycled rubber tires and vary the gauge number and spacing of the wire in order to provide a strong, flexible mat that is economical, environmentally friendly and satisfies the intended use requirements.

### **ANSWERS TO APPLICANT'S ARGUMENTS**

9. In response to Applicant's arguments (*p. 4, of Applicant's Paper filed 2 September 2008*) regarding Rue ('129), it is noted that Rue ('129) is currently only cited as evidence regarding the use of recycled tires, thus, Applicant's arguments are moot.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on (571) 272-1515. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T O'Hern/  
Examiner, Art Unit 1794  
September 15, 2008

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794